

Suggested HAR changes for
Clarifying Exemption Responsibilities by
Amending HAR §3-120-4 and Exhibit A

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Amendment to Chapter 3-120
Hawaii Administrative Rules

April 24, 2012

Historical Note. This amendment of section 3-120-4, Hawaii Administrative Rules, replaces interim rules effective 03/28/11

1. Section 3-120-4, Hawaii Administrative Rules, is amended to read as follows:

"§3-120-4 Procurements exempt from chapter 103D, HRS. (a) Notwithstanding the intent of chapter 103D, HRS, to require governmental bodies to procure their goods and services through competitive bidding, it is acknowledged that there may be situations where procurement by competitive means is either not practicable or not advantageous to the State.

(b) Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated 03/17/2011, is located at the end of this chapter. This exhibit provides a list of goods and services which the procurement policy board has determined to be exempt from chapter 103D, HRS, because although such goods and services may be available from multiple sources, their procurement by competitive means would be either not practicable or not advantageous to the State.

(c) Chief procurement officers may request periodic reports from the heads of purchasing agencies of procurements made pursuant to subsection (b). The heads of purchasing agencies may be required to include in their reports, descriptions of the process or procedures the agency used to select the vendor ensuring maximum fair and open competition whenever practicable.

(d) Chief procurement officers may request that

Comment [RLKP1]: Change to correspond with Exhibit A date change

additional exemptions be added to Exhibit A entitled "Procurements Exempt From Chapter 103D, HRS" dated 03/17/2011, located at the end of this chapter.

(e) The procurement policy board shall review Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated 03/17/2011, located at the end of this chapter, annually or more frequently as needed for amendments.

(f) Purchasing agencies making procurements which are exempt from chapter 103D, HRS, are nevertheless encouraged to adopt and use provisions of the chapter and its implementing rules as appropriate; provided that the use of one or more provisions shall not terminate the exemption and subject the procurement of the purchasing agency to any other provision of the chapter.

(g) Purchasing agencies shall cite on the purchase order or on the contract, the authority waiver as "Exempt From Chapter 103D, HRS, pursuant to section 3-120-4(b) (cite exemption number from Exhibit A titled "Procurements Exempt From Chapter 103D, HRS" dated 03/17/2011, located at the end of this chapter), Hawaii Administrative Rules". [Eff 12/15/95; am and comp 11/17/97; am and comp 6/19/99; am and comp 6/9/01; am and comp 11/15/01; am and comp 11/8/02; am and comp 8/24/09; am
] (Auth: HRS §§103D-102, 103D-202)
(Imp: HRS §103D-102)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to updates source notes to reflect these amendments are not underscored.

4. These amendments to chapter 3-120, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Comment [RLKP2]: Change to correspond with Exhibit A date change

Comment [RLKP3]: Change to correspond with Exhibit A date change

Comment [RLKP4]: Change to correspond with Exhibit A date change

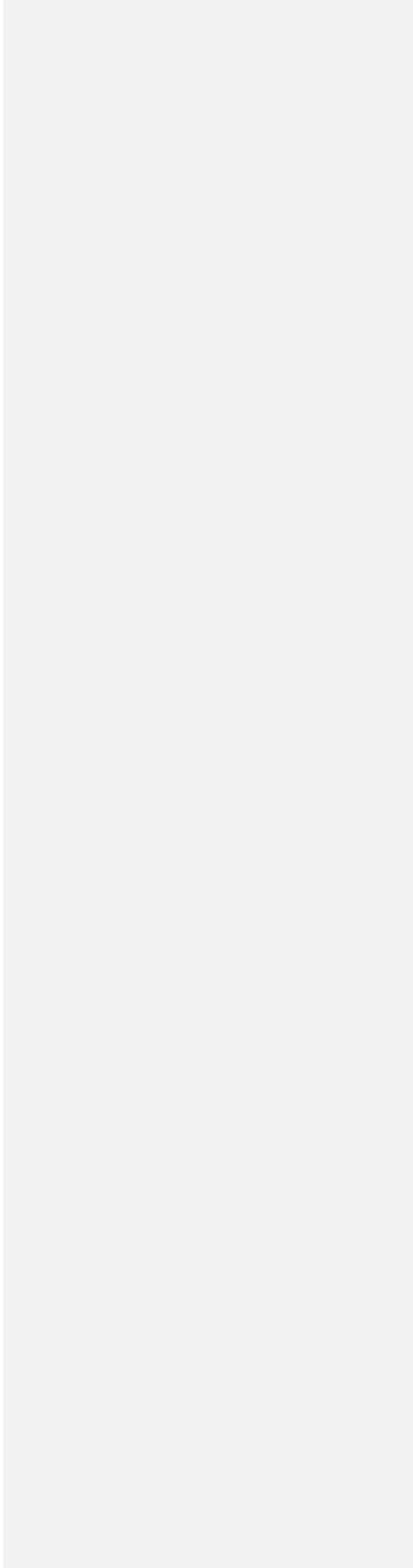
I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on April 24, 2012 by the Procurement Policy Board, and filed with the office of the Lieutenant Governor.

XXXXXXXXXXXXXXXXXXXX
Chairperson
Procurement Policy Board

DEAN H. SEKI
State Comptroller

APPROVED AS TO FORM:

Deputy Attorney General



"EXHIBIT A"

HAR Chapter 3-120
PROCUREMENTS EXEMPT FROM CHAPTER 103D, HRS

3/17/2011

Comment [RLKP5]: Date to change

The following list of exemptions, pursuant to HAR §3-120-4, has been determined to be exempt from HRS chapter 103D by the procurement policy board, however all public employees must continue to conduct and participate in public procurement in a responsible and ethical manner pursuant to §103D-101:

<u>Exemption Number</u>	<u>Exemption</u>
1.	Research, reference, and educational materials including books, maps, periodicals, and pamphlets, which are published or available in print, video, audio, magnetic, or electronic form, including web-based databases, and costs associated with publication of articles in scholarly journals;
2.	Services of printers, rating agencies, support facility providers, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
3.	Services of lecturers, speakers, trainers, facilitators and scriptwriters, when the provider possess specialized training methods, techniques or expertise in the subject matter;
4.	Services of legal counsel, guardian ad litem, psychiatrists, psychologists, receivers and masters when required by court order;

5. Insurance to include insurance broker services;

<u>Exemption Number</u>	<u>Exemption</u>
6.	New or used items which are advantageous and available on short notice through an auction, bankruptcy, foreclosure, etc.;
7.	Food and fodder for animals;
8.	Facility costs for conferences, meetings, and training sessions;
9.	Advertisements in specialized publications, such as in ethnic or foreign language publications, trade publications, or professional publications;
10.	Arbitrator and mediator services;
11.	Interpreter services;
12.	Procurement of repair services when dismantling is required to assess the extent of repairs;
13.	Burial services consisting of mortuary, crematory, cemetery, and other essential services for deceased indigent persons or unclaimed corpses;
14.	Radio and television airtime when selection of station is based on the targeted audience (i.e. ethnic or age group, gender, etc);
15.	Subscription costs and registration or workshop fees for conferences or training; and

16. Court reporter services.